

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT KNOXVILLE

Assigned on Briefs November 22, 2000

**STATE OF TENNESSEE v. AMOS PHILLIPS**

**Direct Appeal from the Criminal Court for Sullivan County**  
**No. S41,666     Phyllis H. Miller, Judge**

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**No. E1999-02776-CCA-R3-CD**  
**December 28, 2000**

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The defendant, Amos Phillips, was convicted of the sale of less than .5 grams of cocaine, see Tenn. Code Ann. § 39-17-417. The trial court imposed a Range II sentence of nine years in the Department of Correction. In this appeal as of right, the defendant contends that the evidence is insufficient and that the trial court erred by allowing the jury, after it had begun deliberations, to review the testimony of state witness Detective David Street. Because the evidence is sufficient to support the conviction and the trial court did not err by granting the jury's request to rehear Detective Street's testimony, the judgment of the trial court is affirmed.

**Tenn. R. App. P. 3; Judgment of the Trial Court Affirmed.**

GARY R. WADE, P.J., delivered the opinion of the court, in which JOE G. RILEY and THOMAS T. WOODALL, JJ., joined.

Thomas R. Bandy, III, Kingsport, Tennessee, for the appellant, Amos Phillips.

Paul G. Summers, Attorney General and Reporter; Russell S. Baldwin, Assistant Attorney General; and Barry P. Staubus, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**

In May of 1998, Joe Graham, a vice detective with the Kingsport Police Department, was involved in an undercover narcotics investigation in the Riverview area of Kingsport. On May 18, Detective Graham arranged for Susan Stickel, a confidential informant employed by the police department, to make a purchase of illegal drugs. Prior to her departure, police searched Ms. Stickel and her vehicle for contraband. They also equipped her vehicle with a hidden video camera. In accordance with plan, Ms. Stickel made an initial drug purchase, unrelated to the defendant, and then reported back to the officers involved in the investigation. At that point, the officers conducted another search of her vehicle and furnished the informant with a one-hundred-dollar bill. At approximately 5:45 p.m., Ms. Stickel acquired what she believed to be cocaine from an individual later identified as Jermaine Talford. Detective Graham did not see the purchase but was able to

listen to the transaction through a body wire worn by Ms. Stickel. Afterwards, Ms. Stickel met Detective Graham and provided him with a small baggie containing white powder. When Detective Graham administered a field test, the substance indicated positive for cocaine. On cross-examination, Detective Graham acknowledged that he neither observed the defendant on the videotape of the transaction nor heard his voice over the wire worn by Ms. Stickel.

At trial, Susan Stickel testified that she received a small baggie of cocaine from Jermaine Talford. She confirmed that police had searched her and her vehicle prior to the buy. She recalled that she wore a wire that allowed audio monitoring, that she was furnished a one-hundred-dollar bill to complete the transaction, and that her vehicle was equipped with a hidden video camera. Ms. Stickel remembered that shortly before 6:00 p.m., as she was driving near Riverview Apartments, Talford asked her to pull over; when she did so, Talford approached her vehicle and asked her what she was "looking for." Ms. Stickel replied, "a gram" and watched while Talford first walked behind her vehicle and then returned on a bicycle. She testified that at that point Talford directed her to wait and, a short while later, returned on foot and tried to enter her vehicle on the passenger's side. Because Ms. Stickel kept that door locked to avoid the possible discovery of the hidden camera, she explained to Talford that the door was broken. Talford instructed Ms. Stickel to drive around the block. During their conversation, Ms. Stickel noticed a heavy-set black male, later identified as the defendant, riding a bike "around in small circles . . . [and] just look[ing] at [her]." After she had driven around the block, Talford motioned her into the parking lot of Sarge's, a nearby bar. Talford then delivered the cocaine in exchange for the hundred-dollar bill. Ms. Stickel admitted that the only person she dealt with directly during the transaction was Jermaine Talford.

Detective David Street, who is assigned to the vice and drug unit of the Kingsport Police Department, testified that he first saw the defendant on May 18 at a location between the two drug purchases made by Ms. Stickel. Detective Street recalled that he drove through the Riverview area after the first purchase to "see what kind of traffic was up." He observed the defendant, dressed in a white shirt and shorts, riding a bicycle. Detective Street then returned to the operation's designated meeting place, where Detective Graham was taking a statement from Ms. Stickel regarding her first drug purchase. During that time, Detective Street searched Ms. Stickel's vehicle to ensure that there was no contraband and re-set the video surveillance system. Afterwards, he went to his surveillance location on the General Shale tower at the end of Lincoln Street, where he was equipped with binoculars, a camera, and a portable police radio.

Detective Street recalled that informant Stickel stopped her vehicle on Lincoln Street after a black male that he identified as Jermaine Talford yelled at her. He testified that he saw Talford approach Ms. Stickel's vehicle and that he heard Talford take "her order" over the body wire. Detective Street then observed Talford walk back across the street, get on a bicycle, ride over to Ms. Stickel, and direct her to move her vehicle over to the curb. He testified that Talford rode his bicycle down the street to Sarge's bar, where he went inside, and, upon returning to his bicycle a little more than a minute later, rode back to a point directly across the street from Ms. Stickel's vehicle. Detective Street stated that he saw Talford attempt to enter the passenger door of Ms. Stickel's vehicle, then approach the driver's side. He recalled hearing Talford explain that he was waiting for

"his guy" to retrieve the drugs. Detective Street then saw informant Stickel drive away and saw the defendant, who was on his bicycle, stop in response to Talford's communication. Through binoculars, Detective Street observed the defendant hand "something" to Talford. He testified that the defendant continued to ride his bicycle and that when Ms. Stickel returned to the area, Talford handed her the same package that he had received from the defendant. Detective Street confirmed that the package had continuously remained in his view in Talford's hand until given to the informant. After the transaction, Detective Street observed Ms. Stickel drive away from the area and Talford return to the defendant. On cross-examination, Detective Street acknowledged that he did not take any photographs of the exchange between Talford and the defendant and that he could not conclusively say that what the defendant had handed to Talford was an illegal drug.

Officer Tim Horne, who was assigned by the Kingsport Police Department to patrol Kingsport Housing Authority property, was not involved in the undercover drug investigation but had knowledge that a confidential informant would be working in the area on the afternoon in question. Officer Horne testified that he saw Ms. Stickel drive onto Lincoln Street and recalled seeing Jermaine Talford approach her vehicle. Officer Horne then saw Talford direct Ms. Stickel into the parking lot next to Sarge's and, through his binoculars, observed Talford hand a plastic baggie containing a white substance to Ms. Stickel. The officer recalled that Ms. Stickel handed Talford some currency and left the area and that, immediately afterward, Talford walked across the street and got on a bicycle. Officer Horne testified that the defendant then rode his bicycle toward Talford, who handed him the same money that he had just obtained from Ms. Stickel. Officer Horne recalled that when he saw the defendant place the money in one of his socks, he stopped and questioned the defendant, who denied having any illegal drugs. The defendant allowed Officer Horne to search him and then pulled his shoes and socks off, explaining, "[t]he only thing I've got is a hundred[-]dollar bill." Officer Horne testified that he did not confiscate the money due to the ongoing drug investigation. He acknowledged that he did not write down the serial number, explaining that it might have made the defendant suspicious. Detective Horne also acknowledged that he had seen Talford with the defendant before and that it was not unusual for them to be talking to one another.

Celeste White, a drug chemist employed by the Tennessee Bureau of Investigation, testified that the substance Ms. Stickel purchased from Talford weighed .2 grams and contained cocaine.

Jermaine Talford testified as a defense witness. According to Talford, informant Stickel asked him for drugs. He testified that he directed Ms. Stickel to drive around the block and that, as she did so, he went inside Sarge's and prepared a baggie containing baking soda and cocaine. Talford claimed that he sold the baggie to Ms. Stickel, in exchange for a one-hundred-dollar bill. Talford stated that after the transaction, he needed change, and offered to exchange the one-hundred-dollar bill for five twenty-dollar bills. Talford maintained that the defendant was not involved in any way with the drug sale to informant Stickel.

During cross-examination, Talford admitted that he had several prior convictions, including a 1994 conviction for theft under \$500, a 1994 conviction for sale of less than .5 grams of crack

cocaine, a 1999 conviction for sale of cocaine, and a 1999 conviction for sale of counterfeit drugs. Talford testified that prior to the drug sale to Ms. Stickel, he had been dropped off in the Riverview area. While acknowledging that he was riding a bicycle at the time of the sale, he could not recall where he had gotten it. Talford maintained that he could not remember such details because he was under the influence of cocaine at the time, but explained that the cocaine had worn off by the time that he was approached by informant Stickel.

## I

Initially, the defendant argues that the evidence was insufficient to support the conviction. The state contends otherwise.

On appeal, the state is entitled to the strongest legitimate view of the evidence and all inferences which might be drawn therefrom. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). The credibility of the witnesses, the weight to be given their testimony, and the reconciliation of conflicts in the evidence are matters entrusted exclusively to the jury as the trier of fact. Byrge v. State, 575 S.W.2d 292, 295 (Tenn. Crim. App. 1978). The relevant question is whether, after reviewing the evidence in the light most favorable to the state, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Tenn. R. App. P. 13(e); State v. Williams, 657 S.W.2d 405, 410 (Tenn. 1983). This court may neither reweigh nor reevaluate the evidence; nor may this court substitute its inferences for those drawn by the trier of fact. Liakas v. State, 199 Tenn. 298, 286 S.W.2d 856, 859 (1956). The evidence is sufficient when a rational trier of fact could conclude that the defendant is guilty beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 319 (1979). The defendant has the burden of demonstrating that the evidence is not sufficient when there is a challenge to the sufficiency of the evidence. State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982).

The applicable statute provides, in pertinent part, as follows:

- (a) It is an offense for a defendant to knowingly:
  - (1) Manufacture a controlled substance;
  - (2) Deliver a controlled substance;
  - (3) Sell a controlled substance; or
  - (4) Possess a controlled substance with intent to manufacture, deliver or sell such controlled substance.

Tenn. Code Ann. § 39-17-417(a).

The defendant asserts that because neither his voice nor his image was captured by the police recording equipment and because Talford denied that he was involved in the drug sale to informant Stickel, no reasonable trier of fact could have found him guilty beyond a reasonable doubt. We disagree. Although the police did not photograph the defendant or record him on either audio or video tape, the testimony of Detective Street and Officer Horne qualified as direct evidence of the defendant's involvement in Talford's sale of the drugs to Ms. Stickel. Detective Street, who observed

the transaction through binoculars and overheard the conversation over the radio, testified that after Talford instructed Ms. Stickel to drive around the block, Talford hailed the defendant, who was riding his bike, and obtained a small package from him. When Ms. Stickel returned, Talford handed her the package in exchange for \$100. Detective Street testified that he was certain that the package transferred to Ms. Stickel by Talford was the same one that Talford had received from the defendant because it had remained in his view until Talford transferred it to Ms. Stickel. The jury accredited Detective Street's account. The package was later determined by the TBI laboratory to contain cocaine. Detective Street also contended that after Talford completed his transaction with informant Stickel, he returned to the defendant and gave him the money used by Stickel to pay for the drugs. His testimony was corroborated by Officer Horne, who witnessed Talford hand the defendant the money and, shortly thereafter, stopped the defendant and found a one hundred-dollar bill in his sock. In our view, this evidence is sufficient to support the defendant's conviction for sale of less than .5 grams cocaine.<sup>1</sup>

As to Talford's denial of the defendant's involvement in the transaction with informant Stickel, it has long been held that the credibility of the witnesses and the reconciliation of conflicts in the proof are matters entrusted exclusively to the jury as the trier of fact. See State v. Sheffield, 676 S.W.2d 542, 547 (Tenn. 1984). As was its prerogative, the jury in this case clearly credited the testimony of Detective Street and Officer Horne and discounted the testimony of Jermaine Talford. Indeed, it comes as no surprise that the jury afforded Talford's testimony such little, if any, weight in light of his self-confessed cocaine usage prior to his transaction with informant Stickel. Accordingly, the defendant is not entitled to relief on this issue.

## II

Next, the defendant asserts that the trial court erred by granting the jury's request to rehear the trial testimony of Detective David Street after deliberations had already begun. Initially, because the defendant failed to include this issue in a motion for new trial, the issue has been waived. See Tenn. R. App. P. 3(e), 36(a). Even if this issue were not waived, however, the defendant would not be entitled to relief. In our view, the trial court acted within its discretion in granting the jury's request.

In State v. Jenkins, 845 S.W.2d 787, 793 (Tenn. Crim. App. 1992), a panel of this court, rejecting earlier dicta to the contrary, held that the decision as to whether a jury should be allowed to review trial testimony is within the discretion of the trial court. In doing so, the court noted that

[j]uries apply emphasis to evidence which is before them. Obviously, if they are allowed to rehear particular testimony at their request, there is benefit to be gained in assisting the jurors to decide issues based upon an accurate recollection of the evidence.

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<sup>1</sup>The judgment form completed by the trial court contains a typographical error to the extent that it indicates that the defendant was indicted for and convicted of the sale of over .5 grams of cocaine.

Id. at 792. The court adopted Standard 15-4.2 of the ABA Standards Relating to the Administration of Criminal Justice as the standard to be applied by a trial court responding to a jury's requests to rehear trial testimony:

(a) If the jury, after retiring for deliberation, requests a review of certain testimony or other evidence, they shall be conducted to the courtroom. Whenever the jury's request is reasonable, the court, after notice to the prosecutor and counsel for the defense, shall have the requested parts of the testimony read to the jury and shall permit the jury to reexamine the requested materials admitted into evidence.

(b) The court need not submit evidence to the jury for review beyond that specifically requested by the jury, but in its discretion the court may also have the jury review other evidence relating to the same factual issue so as not to give undue prominence to the evidence requested.

Id. at 793.

In this case, the trial court properly allowed the jury to rehear the trial testimony of Detective Street. After retiring to deliberate, the jury requested that it be allowed to hear merely that portion of Detective Street's testimony relating to the package exchanged between the defendant and Jermaine Talford. Because the trial court was of the opinion that replaying solely that portion of Detective Street's testimony would place undue emphasis thereon, it denied the jury's request. After again retiring to deliberate, the jury came back with a second request for Detective Street's testimony, this time seeking to have it played in its entirety. The trial court determined the request to be reasonable and replayed Detective Street's testimony for the jury in open court. The ABA standard adopted in Jenkins directs trial courts to permit the requested testimony to be reheard if the request is reasonable. State v. William Jason McMahan, No. 03C01-9707-CR-00262 (Tenn. Crim. App., at Knoxville, March 31, 1999). Detective Street, who was only one of the several witnesses that testified on behalf of the state, gave perhaps the most critical testimony. Under that circumstance, the jury's request was reasonable. The trial court acted well within its discretion.

Accordingly, the judgment of the trial court is affirmed.

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GARY R. WADE, PRESIDING JUDGE